

U.S. Department of Labor

Office of Administrative Law Judges
50 Fremont Street - Suite 2100
San Francisco, CA 94105

(415) 744-6577
(415) 744-6569 (FAX)



Issue Date: 29 January 2003

CASE NO. 1998-ARN-0003

In the Matter of:

**U.S. DEPARTMENT OF LABOR, ADMINISTRATOR,
WAGE & HOUR DIVISION, EMPLOYMENT
STANDARDS ADMINISTRATION,**

Complainant,

V.

**BEVERLY ENTERPRISES, INC.,
BEVERLY HEALTH AND REHABILITATION
SERVICES, INC.,**

Respondents.

DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT

This matter comes on for consideration of an administrative determination of the Secretary of Labor issued on March 13, 1998, under the Immigration and Nursing Relief Act of 1989, 8 U.S.C. Sec. 1101 (a)(15)(H)(i)(a), Sec. 1182(m), and Regulations thereunder found at 20 C.F.R. 655.300 *et seq.* The Administrator and Respondents have submitted agreements and consents in disposition hereof as contained in Consent Findings concurrently adopted, incorporated herein, and made a part hereof. This Administrative Law Judge, having reviewed the proposed Consent Findings, concludes that this settlement agreement is in the best interests of all the parties. Now, therefore, in accordance with such Consent Findings, it is

ORDERED that imposition of civil money penalty in the amount of \$36,000.00 hereby is affirmed, payment of which shall be in accordance with the terms and conditions set forth in said Consent Findings; and withdrawal of Respondents' request for hearing is approved.

It is **FURTHER ORDERED** that Respondents pay civil money penalties in accordance with the terms and conditions set forth in the Consent Findings.

A

Russell D. Pulver
Administrative Law Judge

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of:

CASE NO. 98-ARN-3

ADMINISTRATOR, WAGE AND HOUR DIVISION,
EMPLOYMENT STANDARDS ADMINISTRATION,
UNITED STATES DEPARTMENT OF LABOR,

Prosecuting Party,

V.

BEVERLY ENTERPRISES, INC.,
BEVERLY HEALTH AND REHABILITATION
SERVICES, INC.

Respondents

CONSENT FINDINGS

The Administrator and Respondents hereby stipulate, agree and consent, pursuant to 29 C.F.R. Part 18.9 to entry of findings as follows:

1. This matter arises under the Immigration and Nursing Relief Act of 1989, 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and regulations at 20 C.F.R. Part 655.300 *et seq.*
2. At all times pertinent hereto, Respondents' wholly-owned subsidiaries were employers within the meaning of 20 C.F.R. Sec. 655.302.
3. By written notice dated March 13, 1998, the Administrator assessed civil money penalties against Respondents' wholly-owned subsidiaries for alleged violations of 20 C.F.R. Sec. 655.310(d) and (g), 655.350(b); 655.400(c).
4. On March 23, 2002 Respondents made a timely written request for hearing in accordance with 20 C.F. R. Sec. 655.420.

5. Respondents do not admit the violations alleged by the Administrator.
6. The Administrator hereby amends the aforementioned assessment of penalty to \$36,000.00.
7. Respondents agree to immediately pay such penalty, as amended, by check payable to "Wage and Hour Division-Labor."
8. The Administrator and Respondents agree that:
 - (a) The final order disposing of this proceeding shall have the same force and effect as an order made after full hearing;
 - (b) The entire record on which the final order is based shall consist solely of the complaint, notice of administrative determination and these agreements and consents; and
 - (c) Each party shall bear its own costs, fees and expenses as were incurred by it in connection with any stage of these proceedings.
9. The Administrator and Respondents waive:
 - (a) Further procedural steps before the Administrative Law Judge; and
 - (b) Any right to challenge or contest the validity of these findings or the order entered into in accordance with this agreement.

Dated this ____Day of January, 2003.

BEVERLY ENTERPRISES, INC.,
BEVERLY HEALTH AND REHABILITATION
SERVICES, INC.
Respondents

By: Their Attorney
JULIE M. CARPENTER
Jenner & Block
601 13th Street, N.W.
Washington, D.C. 20005

EUGENE SCALIA
Acting Solicitor

STEVEN J. MANDEL
Associate Solicitor

JONATHAN KRONHEIM
Counsel for Trial Litigation

Attorneys for the Secretary
Of Labor